

### **REMARKS**

This responds to the Office Action dated November 26, 2010.

Claims 25 and 27 are amended. Claims 1-7, 9, 11-37, and 46-55 remain pending in this application.

#### **The Rejection of Claims Under § 102**

Claims 14-20 and 25-37 are rejected under 35 U.S.C. 102(c) as being anticipated by Park (US Patent No. 7,136,705, hereinafter “Park”).

#### ***Claim 14***

Applicant respectfully traverses the rejection and submits that Park does not provide the claimed subject matter. For example, Applicant is unable to find in Park, among other things, a processor adapted to determine a first ventilation rate using a first signal, determine a second ventilation rate using a second signal, and determine a difference between the first ventilation rate and the second ventilation rate, as recited in claim 14.

The Office Action asserts, in paragraph 3, that Park discloses “that a processor determines a rate with each signal and then takes the difference of the two signals (e.g. Col. 12, ll. 31-67).” The cited portions of Park relate to determining “the difference between the minute ventilation sensor indicated rate 425 and the activity sensor indicated rate 420” (Col. 12, ll. 55-57). Thus, the Office Action appears to consider Park’s sensor indicated rates to be the ventilation rate recited in claim 14.

Applicant respectfully disagrees. Sensor indicated rate is a term of art known to refer to a stimulation rate (pacing rate). The cited portions of Park indicate that the sensor indicated rates are between a maximum sensor rate and a minimum sensor rate (see, e.g., FIG. 4) and state:

A base rate refers to a stimulation rate that is appropriate for maintaining the metabolic needs of the patient when he 40 or she is alert but relatively inactive, for example 65 beats per minute. The maximum sensor rate is the maximum stimulation rate to be delivered by device 10 during periods of high metabolic demand.

Thus, Park's sensor indicated rates are stimulation rates. It is believed that a person skilled in the art would not consider the ventilation rates as recited in claim 14 to be stimulation rates.

Therefore, Park does not provide the processor as recited in claim 14.

Applicant respectfully requests reconsideration and allowance of claim 14.

#### *Claims 15-20*

Applicant respectfully traverses the rejection. Claims 15-20 are dependent on claim 14, which is believed to be patentable as discussed above. Therefore, the discussion above for claim 14 is incorporated herein to support the patentability of claims 15-20.

Applicant respectfully requests reconsideration and allowance of claims 15-20.

#### *Claim 25*

Claim 25 has been amended to correct a typographical error.

Applicant respectfully traverses the rejection and submits that Park does not provide the claimed subject matter. For example, Applicant is unable to find in Park, among other things, comparing a first ventilation rate to a second ventilation rate, as recited in claim 25.

Because claims 1 and 25 are rejected on the same ground, the discussion above for claim 1 is incorporated herein to further support the patentability of claim 25.

Applicant respectfully requests reconsideration and allowance of claim 25.

#### *Claims 26-28*

Claim 27 has been amended to correct an antecedent basis error.

Applicant respectfully traverses the rejection. Claims 26-28 are dependent on claim 25, which is believed to be patentable as discussed above. Therefore, the discussion above for claim 25 is incorporated herein to support the patentability of claims 26-28.

Applicant respectfully requests reconsideration and allowance of claims 26-28.

#### *Claims 29*

Applicant respectfully traverses the rejection and submits that Park does not provide the claimed subject matter. For example, Applicant is unable to find in Park, among other things, a

processor adapted to determine a first ventilation rate using a first impedance signal and a second ventilation rate using a second impedance signal and further adapted to determine whether the first ventilation rate substantially differs from the second ventilation rate, as recited in claim 29.

Because claims 1 and 29 are rejected on the same ground, the discussion above for claim 1 is incorporated herein to further support the patentability of claim 29.

Additionally, Applicant is unable to find in Park a first sensor adapted to provide a first impedance signal and a second sensor adapted to provide a second impedance signal, as recited in claim 29. The Office Action asserts, in paragraph 3, that Park discloses “a first sensor and a second sensor (e.g. Col. 12, ll. 4-8).” However, this cited portion of Park relates to an activity sensor and a minute ventilation sensor. While the minute ventilation sensor may provide an impedance signal, the activity sensor, “such as an accelerometer or a piezoelectric crystal” (Col. 10, ll. 33-36), is believed to be incapable of providing an impedance signal. Thus, the alleged first and second sensors of Park differ from the first and second sensors as recited in claim 29.

Applicant respectfully requests reconsideration and allowance of claim 29.

#### *Claims 30-37*

Applicant respectfully traverses the rejection. Claims 30-37 are dependent on claim 29, which is believed to be patentable as discussed above. Therefore, the discussion above for claim 29 is incorporated herein to support the patentability of claims 30-37.

Applicant respectfully requests reconsideration and allowance of claims 30-37.

#### *Allowable Subject Matter*

Applicant acknowledges the allowance of claims 1-7, 9, 11-13, 21-24, and 46-55.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6965 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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